October 15, 2008

EX PARTE PRESENTATION

Chairman Kevin Martin
Commissioner Michael Copps
Commissioner Jonathan Adelstein
Commissioner Deborah Tate
Commissioner Robert McDowell
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: *Developing a Unified Intercarrier Compensation Regime, CC Docket No. 01-92; IP-Enabled Services, WC Docket No. 04-36; Universal Service Contribution Methodology, WC Docket No. 06-122.*

Dear Commissioners:

In response to the numerous, daily *Ex Parte* filings submitted to the Federal Communications Commission (the "Commission") addressing the various proposals regarding unified intercarrier compensation, the Midwest Telecom Executives (the "Executive Group")[1] readily accept the opportunity this process allows to voice its concerns regarding the Verizon and AT&T proposals, as well as express its support for the positions advocating just and reasonable reform for rural, rate of return carriers.

[1] The Midwest Telecom Executives represent the following State Telecommunications Associations: the South Dakota Telecommunications Association; South Dakota Association of Telephone Cooperatives; Iowa Telecommunications Association; and North Dakota Association of Telecommunications Cooperatives.

Primarily, Verizon and AT&T are attempting to persuade the Commission to hastily adopt a unified intercarrier compensation regime consisting of a $0.0007 per minute termination rate[2] for all carriers.[3] The Executive Group shares the expressed concerns of NECA; namely, rural, rate of return carriers depend on cost-based access rates to provide high-quality, advanced services to customers in rural, high cost areas.[4] Such drastic, sweeping reform and the resulting financial detriment to rural carriers certainly would prohibit a rural carrier from any new or continued investment in the rural carriers' networks, including broadband deployment. In a recent *Ex Parte*, NTCA, by employing a simple application of sound, economic analysis, factually refutes Verizon's argument that non-unified rates create a "distortion that prevents market forces from distributing limited investment resources to their most efficient uses."[5] NTCA concludes that "if market forces were left alone to distribute investment resources to their most efficient uses, rural areas in the United States would not have any access to telecommunication or broadband services."[6] The Executive Group strongly agrees with NTCA's assessment that failure by the Commission to complete a comprehensive cost-benefit analysis prior to adopting any newly proposed intercarrier compensation regime would not be responsible.[7] Adopting a unified, terminating access rate that is not cost-based, jeopardizes the statutorily mandated principle of universal service, at the expense of the rural consumer.

Telecommunications industry policies have long recognized the distinct and different characteristics between rural and urban telecommunications providers, fairly taking into account that urban carriers generally serve densely-populated, compact geographic areas, while rural

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[2] In its various filings, AT&T has taken inconsistent positions concerning the disposition of originating rates. *See* Letter from Brian Benison, AT&T, to Marlene H. Dortch, FCC, CC Docket No. 01-92; WC Docket No. 05-337; CC Docket No. 96-45; WC Docket No. 99-68; WC Docket No. 07-135 (Sept. 12, 2008); Letter from Brian Benison, AT&T, to Marlene H. Dortch, FCC, CC Docket No. 01-92; WC Docket No. 05-337; CC Docket No. 96-45; WC Docket No. 99-68; WC Docket No. 07-135 (Oct. 7, 2008); Verizon's proposal, on the other hand, advocates dealing immediately with terminating rates by implementing severe rate reductions and proposing that the Commission issue a Further Notice of Proposed Rulemaking to reform originating access rates by December 31, 2009 further reducing access revenue for rural carriers. *See* Letter from Susanne A. Guyer, Verizon, to Chairman Martine and Commissioners Copps, Adelstein, Tate and McDowell, CC Docket No. 01-92 (Sept. 12, 2008) (Verizon Proposal).

[3] *See* Letter from Donna Epps, Verizon, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Sept. 19, 2008), attaching White Paper (Verizon); Letter from Susanne A. Guyer, Verizon, to Chairman Martine and Commissioners Copps, Adelstein, Tate and McDowell, CC Docket No. 01-92 (Sept. 12, 2008) (Verizon Proposal); Letter from AT&T, Verizon, The VON Coalition, et al., to Chairman Martin and Commissioners Copps, Adelstein, Tate and McDowell, WC Docket No. 04-36, CC Docket No. 01-92 (Aug. 6, 2008) (Coalition Proposal).

[4] *See* Letter from Richard Askoff, NECA, to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Oct. 6, 2008), (NECA)

[5] Verizon, pg. 21

[6] *See* NTCA *Ex Parte* Notice, from Daniel Mitchell to Marlene H. Dortch, FCC, CC Docket No. 01-92; WC Docket No. 04-36 (Sept. 30, 2008) (NTCA Ex Parte).

[7] NTCA *Ex Parte*, presentation at 3

providers serve smaller numbers of end-users throughout large, sparsely-populated geographic areas. In recognition of these differences and the simple fact that small, rural local exchange carriers ("RLEC") have much higher average investment and expense per subscriber line than their urban counterparts, it has long been a legislative and regulatory priority to ensure reasonably comparable services at comparable rates between urban and rural areas. Congress as part of § 254 has specifically mandated that consumers in rural, high cost areas have access to telecommunications and information services, including interexchange services and advanced telecommunications and information services at rates comparable to what urban consumers receive.[8] If the Commission adopts a "one size fits all" intercarrier compensation regime, it is essentially depriving rural carriers of the ability to provide rural consumers with basic telecommunications services or advanced services at the comparable rates which Congress has mandated.

The Executive Group concurs in the assertion that "there is no basis for imposing a single, uniform rate on all carriers."[9] Verizon's feeble attempt to justify the $0.0007 per minute rate as "substantial evidence of a just and reasonable rate"[10] solely because Verizon has had recent experience negotiating interconnection agreements at this rate with carriers such as AT&T and Level 3 completely ignores and disregards the very identifiable and recognized distinctions between price cap carriers serving urban, low cost areas and rate of return carriers serving rural, high cost areas. Due to network variances and geographic locales, transport and termination costs do vary among carriers. As recent NECA studies have shown, a $0.0007 per minute rate for rural companies would fail to even cover the administrative costs associated with billing the related traffic.[11] NECA also recognizes and attempts to correct Verizon's misinterpretation of § 252(d)(2) by properly construing the language which provides for "the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities…"[12] In every respect, the Executive Group agrees with NECA's position that § 252(d)(2) does not "mandate a single, nationwide rate, particularly one that is below incremental cost levels incurred by rate of return carriers in providing service in rural areas."[13]

Moreover, the Commission needs to bear in mind the potential consequences of its actions. Adopting a uniform, nationwide rate for all terminating traffic, including intrastate traffic, may incite an inundation of lengthy and costly litigation. While Verizon attempts to provide the

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[8] 47 U.S.C. § 254(b)(3)

[9] *See* NTCA *Ex Parte*; Letter from Anne C. Boyle, Nebraska PSC, to Chairman Martin, FCC CC Docket No. 01-92 (Sept. 30, 2008); Letter from David Bergmann, NASUCA, to Chairman Martin, FCC, CC Docket No. 01-92 (Sept. 30, 2008), at pg. 2-3; Letter from Jonathan Lechter, Willkie Farr & Gallagher LLP (on behalf of Time Warner and One Comm.), to Marlene H. Dortch, FCC, CC Docket No. 01-92 (Oct. 2, 2008), presentation at 2-4.

[10] Verizon, pg. 31

[11] NECA, pg. 2

[12] 47 U.S.C. § 252(d)(2)(A)(i)

[13] NECA, pg. 3

Commission with questionable legal theories on which it can base its preemption of states' rights, Verizon acknowledges the strain years of additional litigation will have on the industry.[14] NTCA has provided the Commission with a thorough analysis of the legal fallacies contained in Verizon's reasoning.

Both the AT&T and Verizon proposals suggest establishing a new Replacement Mechanism ("RM"), which would be intended to recoup revenue loss due to terminating access and reciprocal compensation rate decline. Both proposals, however, fail to supply sufficient detail on how the RM would be funded or administered. The Executive Group shares the concerns expressed by the Nebraska Public Service Commission that creation of a new support mechanism without specifying a funding source or an economic basis for the amount of support needed may result in "excessive contributions from consumers to pay for the fund growth"[15] which further burdens consumers in tough financial times. In light of the current, nationwide financial crisis, consumers are being forced to prioritize the most basic of everyday necessities, including groceries, healthcare and utilities. Rural telecommunications consumers should not be faced with further financial difficulty for essential telecommunications services. As devastating as the current Verizon and AT&T proposals would be to the rural telecommunications industry and its end-users due to the immediate decline in terminating access, the Commission needs to thoroughly evaluate all aspects of these proposals. While the majority of *Ex Parte* filers are concerned about the loss of terminating access, only the NTCA filings have touched on the consequent loss of originating access. The plans purport to do away with originating access as well, financially straining rural consumers even further and amplifying the need for specific, predictable and sufficient replacement support, which is not demonstrated in these proposals. As noted above, it would not be responsible for the Commission to adopt a plan without comprehensively analyzing the effect a $0.0007 per minute rate would have not only on rural carriers dependent on access revenues for network investment, but also on the rural consumers who would be expected to shoulder the burden in the form of increased telephone service rates in contravention of the goals of universal service. Additionally, the Commission needs to scrutinize the nebulously proposed Replacement Mechanism, while considering the multi-billion dollar windfall Verizon and AT&T will receive due to the decreased access rates proposed under the Verizon and AT&T's proposals that such a support mechanism will need to offset.

The policy implications are clear; if the Commission blindly adopts a "one size fits all" intercarrier compensation regime resulting in the identical treatment of rural, rate of return carriers and urban, price cap carriers, the Commission is actively participating in the demise of rural network investment, increased service rates for rural consumers, and the potential that rural carriers will no longer have the means to provide their customers with the quality, advanced services and comparable rates Congress mandated when it enacted § 254(b)(3). Consequently, the Commission needs to seriously consider those policies and the ensuing effect a $0.0007 per minute rate will have on the carriers. While AT&T and Verizon, the companies proposing the

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[14] *See* Verizon Supplemental Comments of Verizon and Verizon Wireless on Intercarrier Payments for ISP-Bound Traffic and the WorldCom Remand, CC Docket No. 01-92; CC Docket No. 96-98; CC Docket No. 99-68 (Oct. 2, 2008), pg. 3.

[15] *Id.*

$0.0007 rate, stand to gain billions of dollars in financial windfalls, this rate has the likely potential of driving rural carriers out of business and leaving rural consumers with little, if any, option for high quality and reliable local service. The Executive Group appreciates the time constraints the Commission is operating under in dealing with the mandate contained in the *Core* Remand.[16] We, however, join the Nebraska Public Service Commission, NTCA and NECA in urging the Commission to narrowly deal with the ISP-bound traffic issue contained in *Core* and only provide the Commission's legal rationale for excluding ISP-bound traffic from the reciprocal compensation requirements of § 251(b)(5) and devote the time and resources a just, reasonable and comprehensive intercarrier compensation reform plan deserves.

Sincerely,

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[16] *In re Core Communications, Inc.,* No. 07-1446